Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of	)	
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Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61 Part II
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

GTE's REPLY TO OPPOSITIONS

GTE Service Corporation on
behalf of its affiliated
telecommunications companies

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November 5, 1996

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GTE Service Corporation ("GTE"), on behalf of its affiliated telecommunications companies, hereby replies to the oppositions to its Petition for Reconsideration and Clarification ("Petition")[1] of the *Report and Order*, FCC 96-331 (released August 7, 1996).

In its Petition, GTE asked the Commission to reconsider Paragraph 69 of its *Report and Order* insofar as it imposed an unprecedented requirement that a wide range of different companies must integrate their rates solely because of their common ownership by GTE, which itself is not a carrier.[2] GTE also requested that, in the event

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1 Petition for Reconsideration and Clarification, CC Docket No. 96-61 (filed Sept. 16, 1996).

2 Under Paragraph 69, GTE could be required to integrate rates charged by subsidiaries as disparate as its air-to-ground service provider, its interLATA long distance resale service providers, its cellular subsidiaries and its facilities-based subsidiary in the CNMI.

that the Commission does not reconsider that determination, that it instead clarify that the "integration-across-affiliates" interpretation applies to *all* carriers, and is not limited arbitrarily only to the GTE companies, and clarify how such integration across affiliates is to be accomplished.

As shown below, nothing in the oppositions to GTE's Petition justifies the conclusion that Section 254(g), a brief statutory provision intended to codify the Commission's pre-existing policies while adding insular possessions into the domestic rate schedule, authorizes the Commission to ignore legitimate and long-standing distinctions between corporate affiliates and implicitly modify a host of other FCC regulations. Accordingly, the Commission should grant reconsideration of Paragraph 69.

ARGUMENT

I. THE FCC ERRED IN ORDERING GTE TO INTEGRATE DOMESTIC, INTERSTATE, INTEREXCHANGE RATES ACROSS AFFILIATES.

In its Petition, GTE demonstrated that the Commission erred in interpreting "provider" in Section 254(g) to include parent companies that provide no services, rather than their affiliated companies which hold carrier authorizations and which are the entities that actually *provide* telecommunications services.[3] Several parties, principally AT&T, the State of Alaska, and the Counsel for the Commonwealth of the

[3] Notably, GTE's analysis of Section 254(g) was endorsed by parties as disparate as MCI and the Rural Telephone Coalition. *See* Comments filed by MCI Telecommunications Corporation at 2 ("*MCI Comments*"); Comments filed by the Rural Telephone Coalition at 7 ("*RTC Comments*").

Northern Mariana Islands ("CNMI"), took issue with GTE's analysis. As shown below, their arguments are unpersuasive.

A. Section 254(g) Unambiguously Establishes That Parent Companies That Are Not Themselves "Carriers" Are Not "Providers" Under The Rate Integration Provision Of The Act.

In its Petition (at 4), GTE demonstrated that the language of Section 254(g) leaves no doubt that the term "provider" does not encompass parent companies that themselves provide no carrier services. Accordingly, the interpretation adopted in Paragraph 69 of the *Report and Order* is inconsistent with the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Contrary to some commenters, Section 254(g) contains no statutory ambiguity that would warrant deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984).[4] In Section 254(g), Congress specifically limited the rate integration requirement to "providers." Furthermore, Congress specifically distinguished "providers" from their "affiliates."[5]

Moreover, as GTE's Petition observed (at 5-6), the Act equates "telecommunications carrier" with "any provider of telecommunications services," except

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4 *See* Consolidated Opposition and Reply Comments of the State of Hawaii at 10 ("*Hawaii Opposition*"); Opposition to Petitions for Reconsideration filed by the CNMI at 4 ("*CNMI Opposition*").

5 *See* GTE Petition at 4. Moreover, the Act obviously recognizes that each affiliate of a carrier is a different "person." *Id.* at 5. The CNMI's citation (at 3) to *U S WEST v. FCC,* 778 F.2d 23 (D.C. Cir. 1985), is unpersuasive. That case itself shows that the FCC has never held that parent companies are themselves carriers.

aggregators.[6] Aggregators are the lone "providers" of telecommunications services that are *not* carriers under the Act.[7] There was no reason for Congress expressly to exempt other entities, such as parent companies, that are not otherwise "providers of telecommunications services" under the Act.

Alaska's assertion[8] that the FCC's prior finding that the domestic, interexchange market is a single market is simply irrelevant. The issue is not what services must be integrated, but what providers must integrate their rates. Furthermore, the Commission's past rate integration policies, as the Conference Report expressly recognized, have consistently allowed variations from rate integration in many contexts that fit within the single interexchange services market.

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[6] By defining "telecommunication carrier" as "*any* provider of telecommunications services" (emphasis added) and in no other way, Congress indeed decreed that any "carrier" is also a "provider." The CNMI errs in analogizing this reasoning to the logical fallacy that "since a cathedral is a type of building, all buildings must necessarily be cathedrals." CNMI Opposition at 4. The flaw in the CNMI's argument is that the Act nowhere defines "provider" as anything other than a "carrier." The Act does *not* say that "carriers" are a type of "provider" -- the CNMI analogy -- rather, it defines a carrier as *any* provider (except aggregators). The error of the CNMI position is evident if one imagines that the initial premise in the classic fallacy were: "cathedrals are any building." That is the formulation of the Act, which differs greatly from the CNMI's fallacy.

[7] 47 U.S.C. § 153(44). Aggregators make telephones directly "available to the public," *see* 47 U.S.C. § 226(a)(2), subject to regulation under the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), *see* 47 U.S.C. § 226(c). The statutory exemption was necessary to ensure that the 1996 Act would not inadvertently designate aggregators as carriers, a status that aggregators do not have under TOCSIA. This readily distinguishes aggregators from a parent company, such as GTE, that has no such contact with end users.

[8] Opposition of the State of Alaska to Petitions for Reconsideration, Partial Reconsideration and Clarification at 11 ("*Alaska Opposition*").

Finally, the CNMI's argument (at 3, n.7) that the FCC can assert indirect jurisdiction over parent companies through their affiliates is not persuasive in this context because the statute provides otherwise.[9] Thus, the FCC's general jurisdiction over the carriers themselves does not give it authority to rewrite Section 254(g) to require those carriers to intermingle their rates to achieve the rate integration of U.S. insular possessions.

B. Recognizing That Separate Affiliates Need Not Integrate Their Rates Does Not Vitiate Section 254(g) In The Absence Of "Shams."

A number of parties contend that grant of GTE's Petition would effectively abolish rate integration, as carriers would create a series of new affiliates in order to avoid rate integration.[10] This scenario seems to depend on the unlikely assumption that companies would go to the trouble and expense of establishing and maintaining a multitude of new corporate structures simply to avoid rate integration. The Commission should await solid evidence before acting on the basis of such a far-fetched assumption. Indeed, many corporate subsidiaries exist for perfectly legitimate reasons,

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[9] The CNMI also argues that, since GTE submits filings on behalf of the Micronesian Telecommunications Corporation ("MTC"), that rate integration across affiliates is appropriate. *CNMI Opposition* at 8-9. This is utterly without merit. As the CNMI surely is well aware, FCC policy allows affiliated companies to provide administrative and legal support services. Simply providing such services does not mean that the affiliate is not operated as a separate business. As the Commission is well aware, and to a large extent because of the Commission's rules, GTE's local exchange affiliate in the CNMI, MTC, has separate operations and books of accounts from GTE's other affiliates.

[10] *E.g.,* Joint Opposition filed by the Office of the Governor of Guam and the Guam Telephone Authority at 7 ("*Guam Opposition*"); *Alaska Opposition* at 9.

such as to satisfy state requirements or to accommodate federal statutory and regulatory policies.

As GTE's Petition explained, the actual operations of the GTE subsidiaries confirm that they are, in fact, separate operating carriers. FCC licenses and authorizations are issued in the name of the entity that in fact provides the service to customers, and state authorizations likewise are issued in the name of the specific operating entities in the respective states. With respect to the offshore points discussed in the *Report and Order*, no GTE carrier provides two-way service to those points, and none of these GTE carrier affiliates share facilities.[11]

While the FCC might retain some authority to require rate integration over "sham" corporate subsidiaries, as MCI and the Rural Telephone Coalition suggest,[12] there is certainly no evidence that GTE or any other company has created sham subsidiaries. A remedy as Draconian as erasing separate legal identities and independent operations, as Paragraph 69 in effect does, should, as a matter of due process, require a persuasive evidentiary foundation. There is none on this record.

In this context, AT&T's contention that it integrated rates across post-divestiture different affiliates is not dispositive.[13] First, AT&T's rate integration obligations long

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[11] As noted in GTE's Petition, MTC provides terminating service in the Northern Mariana Islands to GTE Hawaiian Tel. Similarly, GTE Hawaiian Tel provides terminating service to Hawaii for calls from the Northern Mariana Islands.

[12] *See MCI Comments* at 3; *RTC Comments* at 7-8.

[13] *AT&T Comments* at 1-2.

predated divestiture, and any effort to use its post-divestiture subsidiaries to evade rate integration would certainly have been vulnerable as a sham. Second, AT&T nowhere contends that its separate subsidiaries acted independently from one another. Third, AT&T rests its contention on conduct occurring prior to the adoption of Section 254(g) which, as GTE's Petition explains, contains precise definitions that delineate the scope of the integration requirements in a manner that could differ from prior law. Fourth, even AT&T's post-divestiture rate integration had limits, for it concedes that it did not integrate the rates among traditional wireline and CMRS providers.[14] Finally, AT&T's position is highly self-serving and anticompetitive, for it is simultaneously beseeching the FCC to grant it what amounts to a *carte blanche* exemption from rate integration requirements in order to price discriminate to the detriment of small regional carriers.[15]

C. Integration Across Affiliates Contravenes FCC Policies

GTE's Petition also pointed out that Paragraph 69 in effect abrogates existing FCC policies that requires separate affiliates and prohibit cross-subsidies. Although the State of Alaska disputes this point, its contentions lack merit.

Alaska's novel contention (at 12) that GTE should be required to integrate the rates of many affiliates because it is not required to offer interexchange service through more than one subsidiary is surprisingly naive. Alaska ignores the myriad of regulations

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[14] *Id.* at 3, n.2.

[15] While on the other hand, AT&T seeks to protect itself from large regional carriers, such as Bell Atlantic, in seeking permission to regionally deaverage previously averaged geographic rates as a response to competition. *See* Public Notice, DA 96-1779 (released October 28, 1996).

-- including the *Competitive Carrier Proceeding*, CC Docket No. 96-149, and the CMRS provisions of Section 332 -- which impose a wide range of different restrictions and obligations depending upon how "domestic interexchange" services are offered. Indeed, treating separate affiliates differently is entirely consistent with the Commission's rate integration policies pre-dating the 1996 Act.

Thus, the Commission should not require rate integration across such separate affiliates as GTE Airfone, MTC (which provides local exchange, interstate access, and domestic and international interexchange services), GTE Mobilnet (a CMRS provider), and GTE Long Distance (a non-dominant reseller). In this context, GTE agrees in principle with AMSC's contention (at 7) that there is no requirement to integrate a switched wireline service with its wireless satellite service.[16]

Alaska also argues (at 12) that nothing in Paragraph 69 requires one GTE affiliate to engage in a cross-subsidy, attempting to draw an analogy to a local carrier's assessment of a single rate despite different loop costs. First, Alaska appears to misunderstand the issue -- the local rate is an example of rate *averaging* among low and high cost customers, not rate *integration*. Second, loops belong only to a *single* LEC; Paragraph 69, in contrast, purports to impose requirements across *different* companies. Third, Paragraph 69 could, in fact, either require a cross-subsidy among

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[16] *Reply Comments of AMSC Subsidiary Corporation on Request for Extension of Compliance Deadline* at 12. However, as GTE has pointed out in comments on AMSC's waiver request, AMSC is "affiliated" with AT&T, which owns 11 percent of its stock. Accordingly, unless Paragraph 69 is reconsidered, its consistent application requires the integration of AT&T's rates with those of AMSC.

separate affiliates or, by requiring affiliates to charge non-compensatory rates, constitute a confiscation.

The State of Hawaii asserts (at 9, n.20) that GTE's concern about cross-subsidy is "arguing against the intent of the statute." On the contrary, nothing in the Act requires a provider to integrate the U.S. insular possessions into domestic rate bands at the price of cross-subsidization or confiscation. With the possible exception of the Universal Service provisions of the Act, Congress nowhere required different carriers to cross-subsidize one another.[17]

II. GTE's REQUEST FOR CLARIFICATION THAT THE SAME INTERPRETATION OF "PROVIDER" APPLIES TO ALL AFFILIATED CARRIERS IS UNOPPOSED.

No party took issue with GTE's Petition for Clarification that, if the FCC truly will require integration across affiliates, that such a requirement should apply to all other parent companies as well, rather than apply arbitrarily only to GTE.[18] Accordingly, if the Commission declines to reconsider its determination in Paragraph 69, then the record provides no basis for not imposing the same "across-all-affiliates" requirement on all other providers that have a common corporate parent.

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[17] Hawaii incorrectly asserts (at 9, n.20) that a GTE affiliate serves Guam. In fact, GTE's MTC affiliate serves the CNMI. MTC has been trying for years to lay fiber optic cable between the CNMI and Guam, and recently obtained the final approvals necessary.

[18] This aspect of GTE's Petition was supported by Guam. *Guam Opposition* at 7.

III. CONCLUSION

For the foregoing reasons and those stated in its Petition for Reconsideration and Clarification, the Commission should reconsider its Paragraph 69 interpretation of "provider" that requires rate integration across separate corporate affiliates, or apply the same ruling to all other similarly situated companies.

Respectfully submitted,

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Reply to Oppositions" have been mailed by first class United States mail, postage prepaid, on November 5, 1996 to all parties on the attached list.

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